



**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**[Docket Number DARS-2022-0021]**

**Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Rights in Technical Data and Computer Software (OMB Control Number 0704-0369)**

**AGENCY:** Defense Acquisition Regulations System; Department of Defense (DoD).

**ACTION:** Notice and request for comments regarding a proposed extension of an approved information collection requirement.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use under Control Number 0704-0369 through December 31, 2022. DoD proposes that

OMB approve an extension of the information collection requirement, to expire three years after the approval date.

**DATES:** DoD will consider all comments received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 0704-0369, using any of the following methods:

- o Federal eRulemaking Portal: <https://www.regulations.gov>.

Follow the instructions for submitting comments.

- o Email: [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include OMB Control Number 0704-0369 in the subject line of the message.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Johnson, at 202-913-5764.

**SUPPLEMENTARY INFORMATION:**

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.71, Rights in Technical Data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses; OMB Control Number 0704-0369.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Respondent's Obligation:* Required to obtain or retain benefits.

*Reporting Frequency:* On occasion.

*Type of Request:* Extension of a currently approved collection.

*Number of Respondents:* 75,250.

*Responses Per Respondent:* 13, approximately.

*Annual Responses:* 959,602.

*Average Burden Per Response:* 1 hour, approximately.

*Annual Response Burden Hours:* 904,574.

*Annual Recordkeeping Burden Hours:* 90,600.

*Total Annual Burden Hours:* 995,174.

*Needs and Uses:* DFARS subparts 227.71 and 227.72 prescribe the use of solicitation provisions and contract clauses containing information collection requirements that are associated with rights in technical data and computer software. DoD needs this information to implement 10 U.S.C. 2320, Rights in technical data, and 10 U.S.C. 2321, Validation of proprietary data restrictions. DoD uses the information to recognize and protect contractor rights in technical data and computer software that are associated with privately funded development; and to ensure that technical data delivered under a contract are complete and accurate and satisfy contract requirements.

DoD uses the following DFARS provisions and clauses in solicitations and contracts to require offerors and contractors to identify and mark data or software requiring protection from unauthorized use, release, or disclosure in accordance with 10 U.S.C. 2320:

252.227-7013, Rights in Technical Data–Noncommercial Items.

252.227-7014, Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

252.227-7017, Identification and Assertion of Use, Release, or Disclosure Restrictions.

252.227-7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

In accordance with 10 U.S.C. 2320(a)(2)(D), DoD may disclose limited rights data to persons outside the Government, or allow those persons to use data with use, release, or disclosure restrictions, if the recipient agrees not to further release, disclose, or use the data. Therefore, the clause at DFARS 252.227-7013, Rights in Technical Data—Noncommercial Items, requires the contractor to identify and mark data or software that it provides with limited rights.

In accordance with 10 U.S.C. 2321(b), contractors and subcontractors at any tier must be prepared to furnish written justification for any asserted restriction on the Government's rights to use or release data. The following DFARS clauses require contractors and subcontractors to maintain adequate records and procedures to justify any asserted restrictions:

252.227-7019, Validation of Asserted Restrictions—Computer Software.

252.227-7037, Validation of Restrictive Markings on Technical Data.

In accordance with 10 U.S.C. 2320, DoD must protect the rights of contractors that have developed items, components, or processes exclusively at private expense. Therefore, the clause at DFARS 252.227-7025, Limitations on the Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends, requires a contractor or subcontractor to submit a use and nondisclosure agreement when it obtains data from the Government to which the Government has less than unlimited rights. In addition, DFARS 227.7103-7, Use and nondisclosure agreement, requires intended recipients of technical data or computer software delivered to the Government with restrictions on use, modification, reproduction, release, performance, display, or disclosure, to sign the use and nondisclosure agreement at 227.7103-7(c) prior to release or disclosure of the data, unless the recipient is a Government contractor that requires access to a third party's data or software for the performance of a Government contract that contains the clause at 252.227-7025, Limitations on Use or Disclosure of Government-Furnished Information Marked with Restrictive Legends. According to 10 U.S.C. 2320(a)(2)(D), DoD may disclose limited rights data to persons outside the Government, or allow those persons to use limited rights data, if the recipient agrees not to further use, release, or disclose the data.

The provision at DFARS 252.227-7028, Technical Data or Computer Software Previously Delivered to the Government, requires an offeror to identify any technical data or computer

software that it previously delivered, or will deliver, under any Government contract. DoD needs this information to avoid paying for rights in technical data or computer software that the Government already owns.

**Jennifer D. Johnson,**

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